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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/626,636	07/27/2000	Gary Karlin Michelson M D	102.0003-04000	6124
22882	7590	08/24/2005	EXAMINER	
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			HO, UYEN T	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/626,636

Applicant(s)

MICHELSON M D, GARY KARLIN

Examiner

(Jackie) Tan-Uyen T. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 172-331 is/are pending in the application.
- 4a) Of the above claim(s) 185-189, 196-200, 203-206, 227-336, 239-246 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 207-226, 237 and 238 is/are allowed.
- 6) ☒ Claim(s) 172-184, 247-267, 289-293, 301-315, 318 and 331 is/are rejected.
- 7) ☒ Claim(s) 190-195, 201, 202, 268-288, 294-300, 316, 317 and 319-330 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
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Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 172-184, 247-267, 289-293, 301-315, 318 and 331 are rejected under 35 U.S.C. 102(e) as being anticipated by Jacobson (4,545,374). Jacobson discloses an apparatus for use in performing human interbody spinal surgery comprising: a guard (30), a cap (35), 13, bone removing devices (13,17,18), inner guard (40), and a footplate/impaction end/cap (fig. 13A), as claimed.

Allowable Subject Matter

3. Claims 190-195, 201,202, 268-288,294-300,316-317, 319-330 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 207-226, 237-238 are allowed.

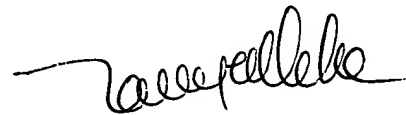
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Jackie Tan-Uyen T. Ho', written in a cursive style.

(Jackie) Tan-Uyen T. Ho
Patent Examiner
Art Unit 3731

August 11, 2005